

**From:** [Jackson, Ryan \(Inhofe\)](#)  
**To:** ['Osborn, Mark'; sward@cwlaw.com; Miles Tolbert \(miles.tolbert@crowedunlevy.com\); James Costello/R6/USEPA/US@EPA; Sam Coleman/R6/USEPA/US@EPA](#)  
**Cc:** (b) (6)  
**Subject:** RE: LICRAT Legislation  
**Date:** 07/05/2011 12:17 PM

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Either day is fine with me.

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**From:** Osborn, Mark [mailto:OsboJM@integris-health.com]  
**Sent:** Monday, July 04, 2011 6:07 PM  
**To:** sward@cwlaw.com; Miles Tolbert (miles.tolbert@crowedunlevy.com); Jackson, Ryan (Inhofe); 'costello.james@epa.gov'; coleman.sam@epa.gov  
**Cc:** (b) (6)  
**Subject:** LICRAT Legislation

Gentlemen,

I hope you are having a good holiday weekend. I have reviewed the recent emails concerning the proposed legislation and would like to have a conference call on Thursday or Friday of this week to begin to iron out any remaining issues. I am open at 3-5pm Thursday and after 3:30 on Friday.

It has become apparent to me why I am having so much indigestion concerning this process. While, in general, I am comfortable with intent and wording of the Trust's part of the legislation I am not with the consolidation of fractional interests. It is not that I am necessarily opposed. It is simply that I do not understand it. To that end Steve it would be helpful if you could provide written responses to my questions which are pertinent to you before our phone conference. Of course, if any one else can shed some light for me, I would appreciate that as well.

I am dealing with several deadlines. One is the next meeting of the Trust which is tentatively scheduled for August 3rd. It is our intention to take care of our outstanding issues, of which this is one, and not to meet again until November or December. I cannot support this legislation without the approval of the Trust so missing this deadline would set back the process of transferring the land significantly. I would like to be able to ask for a resolution of support from the Trust on August 3rd.

Secondly, I am, quite frankly, growing tired of this process. In addition, several new opportunities and obligations have presented themselves to me, some of which may require my resignation from the Trust. The concept of the transfer of the land to the Tribe is my idea and I cannot guarantee that future appointees would see things as I do. It is still, I think, the best resolution of Trust affairs. So if we are going to get this done now is the time to do it.

Here is my proposed timeline. I would like to have all of my questions answered by this week. Steve, I think you promised to do this at my convenience, so this is your chance to make good on your promise. Following this weeks phone conference I would like to have a meeting or phone conference with the entire group, including the BIA, DOI and John Clarke of the Ottawa County Commissioners after we have had a chance to distribute our revised product. I will be in OKC on July 14th for an evening meeting and could meet that afternoon or we could schedule a phone conference that morning. The next week I will be on vacation but could have a phone conference if it is necessary. The overall goal is to have a finished product we can all support by end of July so that it can be distributed with the Trust members information packets at least 48 hours prior to the meeting August 3rd. Ideally I would like to distribute it before then so that they will have plenty of time to review it.

Unfortunately, for the brighter minds in the group, my Trust members are counting on me to understand the details and consequences of what I am going to ask them to support. I owe that to them. So please bear with me.

As for my questions:

1) The 6-6-11 draft has changed the title and purpose of the legislation to include economic development. While this may apply to the consolidation of fractional interests and chat it conflicts with the restrictions which we have spelled out for the transfer of LICRAT lands where we list all the ways it **can't** be used for economic development. I am concerned that this will present the wrong impression, particularly to board members and the press. In attempting to clarify this I have rewritten Sec.2 to be more to my liking and more consistent with our purpose as I understand it. This is the first piece of federal legislation I have ever helped to write, so please feel free to save me from myself. It is as follows:

## Sec.2. PURPOSE

The purpose of this Act is to facilitate and streamline the remediation of the Tar Creek Superfund Site by providing for the transfer of ownership interests in land the State of Oklahoma acquired under authority of Public Law 110-114 (121 Stat. 1041) for the purpose of relocation of the individuals residing thereon and to encourage environmental remediation and economic development of the area by providing for the consolidation of fractional ownership in Indian lands and chat within the Superfund Site;

The State of Oklahoma now desires to divest itself of such lands;

The Quapaw Tribe of Indians of Oklahoma has informed Congress, the Department of the Interior, and the State of Oklahoma that it desires to acquire such lands for the purpose of environmental remediation and to consolidate the interests of individual Indians to promote environmental remediation and economic development;

Congress desires to facilitate the transfer desired by the State and requested by the Tribe.

As a side note, some of the lands owned by the Trust were not acquired specifically for the purpose or relocation of residents (i.e. the lands transferred to the Trust by the ORA as required in the legislation). Do these need to be noted separately?

2) What is the difference between "Trust Land" and "Restricted Land" in Sec.3(8)?

3) What does it mean when it says "held...subject to restrictions by the United States against alienation"?

4) In Sec.4 (c) (1) and (2) there are multiple phrases strung together with opposite intent. Legally speaking is the punctuation correct? In other words, is it standard for "excluding" to apply to all subsequent phrases in the sentence?

5) As for Sec.5 I have multiple questions.

- Does the Tribe pay the individual Indian for their fractional share?
- Does the consolidation of fractional shares include mineral rights **and** chat ownership?
- What if the Tribe cannot acquire complete ownership of the parcel of land?
- Why does this process not take land off the tax rolls?
- Will this section allow the purchase of chat rights on land that is not held in Trust or that is "Restricted Land"?
- What is the Indian Land Consolidation Act and why will the DOI not allow its use in the Superfund Site?
- Am I correct in my newfound understanding that Sec.5 will not cause any new lands to be put into Trust and thus to be taken off the tax rolls?
- How does the acquisition of chat work? Will any new land be put into Trust because of Sec.5.(c)?

It would be nice to have examples of each type of transfer so that I can use them in my attempts to

explain the legislation. As you can probably tell by now, the simpler the better.

6) As for Sec.7.(c) if the EPA wants this and thinks it is necessary I will support it wholeheartedly as long as Jim can explain to me what it means.

7) As for Sec.7(d) it seems to me that this should be one sentence and the period after "interest" replaced with a comma.

8) And finally one last question for Steve. Do you foresee any criticism from the general public about this law?

I genuinely appreciate you all being willing to work with me on this. I realize the questions may be sophomoric but I hope this will get us nearer an end product. Feel free to share this with anyone you feel appropriate but I would like to limit our next conference call to this list of recipients as a larger initial group may impair my educational process. For once in my life, unfortunately for all of you, this is all about me (although my wife would beg to differ).

Please let me know as soon as possible about your availability for the phone conference on Thursday or Friday.

Best holiday wishes,

Mark

If anyone would like to call me before to discuss any of these issues my office number is (918) 542-3900 and my cell number is (b) (6) ..

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**From:** Stephen Ward [mailto:sward@cwlaw.com]  
**Sent:** Tuesday, June 07, 2011 2:17 PM  
**To:** Jackson, Ryan (Inhofe); 'Miles Tolbert'  
**Cc:** Osborn, Mark; Ogahpah 1; Tim Kent; (b) (6)  
**Subject:** Tar Creek Land Remediation and Economic Development Act [RESEND]

*[This is a resend, because I accidentally sent the message before I completed my comments. — SRW]*

Ryan and Miles:

We appreciate receiving the updated draft of the Tar Creek land consolidation bill that Ryan distributed yesterday, and it appears we are very close. I have made a few comments on the draft for your consideration, although they are subject to Chairman Berrey's and the Tribe's additional comments.

In summary:

1. We don't think the DOI's request to have the land conveyed into restricted status, as opposed to trust, is workable. The drafting group probably should discuss this further, though, and we would like to understand DOI's reasons for requesting this change.
2. In response to Ryan's comment about the Section 4 conveyances, we will be glad to discuss them. The section looks good to the Tribe, as is, and it is consistent with what was discussed and agreed at the January 31 meeting.
3. We completely understand the basic issue with the state of the title to be conveyed. Unfortunately, there are no real options for clearing title that are quick and economical. This is something we probably should discuss on a call.
4. We understand Miles' concerns about the language contained in Section 4(e). However, the entire Superfund Site is under remediation, and I am not certain we can improve on the draft language. Again, this is something we probably should discuss in a conference call.
5. The language originally proposed for Section 5(a)(1) permits the Tribe to use ILCA to consolidate fractional Indian land interests anywhere in the Superfund Site. For that reason, we have reinserted the term "Superfund Site" instead of "Covered Area," which is a small subarea of the Superfund Site. This language does not take land off the tax rolls—it simply permits the Tribe to use ILCA to consolidate fractional interests in existing Indian land anywhere in the Superfund Site. DOI has had a policy for several years of preventing the Tribe from using ILCA within the Superfund Site. The Tribe sees this provision as key in helping consolidate fractional interests in land within the Superfund Site, which will aid with remediation and other goals.
6. Section 5(c) is necessary to enable the Tribe to buy restricted land and chat under ILCA, and thereby consolidate ownership in both. As I noted, DOI has refused to allow the Tribe to use ILCA within the Superfund site for several years. We think this language will greatly help efforts to consolidate title in both Indian land and in Indian chat.
7. Section 7(c) is another section we probably should discuss. There are pros and cons on this language, although I think it probably is essential to assign this responsibility to some party.

I can be available to visit about the updated draft, at your convenience. Again, it appears that we are very close on the draft language.

Stephen Ward  
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**From:** Jackson, Ryan (Inhofe) [mailto:Ryan\_Jackson@inhofe.senate.gov]

**Sent:** Monday, June 06, 2011 3:48 PM

**To:** Stephen Ward; 'Miles Tolbert'

**Cc:** 'Osborn, Mark'

**Subject:** Tar Creek legislation

Gentlemen –

I wanted to see how this draft of the legislation strikes you.

I think I've only made minor changes to the previous draft. I had a few questions I wanted to ask you about the bill though:

- First, I'm presently working with some drafting attorneys in the Senate to incorporate the map into the legislation.
- I placed "in restricted status" next to "in trust" in red throughout the bill. Recently DOI has approached me with second thoughts on the "in trust." They have argued that there could be a restricted status in which the lands could be held with the same benefits as holding it in trust and avoiding state taxes. Although I'm not willing to concede this point, DOI representatives should be able to discuss this at the meeting this week.
- Is there an opportunity to discuss the way we've drafted the Section 4 conveyances when you have an opportunity?
- Has the issue of transferring land from the state to the tribe or simply the issue of transferring covered land by quitclaim deed been resolved? (I ask because that was a serious issue in the previous call which Barbara raised). I just didn't know if in the meantime DOI has conceded on this point.

- I placed back into the draft a limit on conveyances unless the land was being remediated. The site is being remediated and will continue to be under the ROD, it just seems to make DOI feel better to say it. DOI may raise the issue of whether all the structures have been demolished. They don't want land with structures.
- Section 5(c) allows the tribe to acquire interest in chat. Is this necessary since the tribe has a bid in presently on the Sooner Pile? Can't the tribe already do this?
- I would expect DOI to oppose Section 7(c). This was something Jim Costello raised in a previous call that DOI was not doing and should, but do we want to push this on behalf of EPA?

I'll have the opportunity to look through this further later tonight (just to double check if what I'm saying in this draft and email makes sense).

Your thoughts are coveted.

Steve, I also received your email from earlier today. I'm wasn't able to break free to call, but I'm open much of tomorrow.

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